IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO.3154 OF 2005

Plaza Diamond Properties Pvt.Ltd.
& anr. Petitioners

vs.

The Appropriate Authority & ors. Respondents

Dr.Virendra Tulzapurkar, Senior Counsel with
Mr.K.G.Munshi & Mr.A.Diamondwala, Advocagtes
i/b.M/s.Divya Shah & Associates for the petitioners.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 21st March, 2006

P.C.

Heard Dr.Virendra Tulzapurkar, the learned senior counsel for the petitioners.

2. The first petitioner claims to be owner of the property admeasuring 821.74 sq.mts., the details of which have been set out in paragraph 2(d) of the writ petition by virtue of the consent decree dated 3rd of August, 1983. The said property was leased out to Kishandas Tribhovandas. Upon demise of Kishandas Tribhovandas, the lease was acquired in favour of Sharma Properties Private Limited. Sharma Properties Private Limited is said to have subleased the subject property to Swastik India Private Limited. It is the case of the first petitioner that upon becoming owner of the subject

property, it acquired the rights of the lessor vis-a-vis - sublessee (Swastik India Pvt.Ltd.). It appears that Swastik India Private Limited sought to transfer the shares in the property to Atmaram W. Alwani and others. The Appropriate Authority under the Income Tax Act sought to acquire the said property under Chapter XX-C of the Income Tax Act. The transferees Atmaram W. Alwani accepted the acquisition and they asked for payment of Rs.4 crores. The deposit of Rs.4 crores is said to have been made and by the order dated 27th June, 1997, the Appropriate Authority passed the order of acquisition under Section 269-UD. It appears that later on by the order dated 24th December, 1997, under Section 269-UJ of the Income Tax Act, the Appropriate Authority passed an order withdrawing from the acquisition on the ground that the transferees suppressed the material facts that the lease was for a period of 10 years. In the opinion of the Appropriate Authority, the order passed in Form No.37-I was non-est. It appears that controversy regarding the acquisition of the property relating to the transfer of Swastik India Private Limited to Atmaram W. Alwani and others was subject matter of writ petition before this Court being Writ Petition No.1887/1997. The said writ petition was disposed of on 23rd October 2002 by the following order:

> "Firstly, if the Department was of the view that there was suppression of material facts

on the basis of which order of acquisition came to be passed, then nothing prevented the Appropriate Authority from raising this point in appropriate proceedings under Chapter XX-C. In fact as stated above, on 2/12/1997, the Appropriate Authority withdrew from acquisition vide order under Section 269UJ. That order dated 24/12/1997 was vacated as it was pointed out to the Appropriate Authority that there was a pending stay operating in the matter. However, nothing prevented the Appropriate Authority from passing fresh orders after obtaining permission from the Court. Secondly, the point which is raised by the Department viz. that the lease was for less than 12 years required adjudication under Section 269UJ and that, without adjudication, we cannot permit the Department to raise the point before us particularly when there is no order passed by the Department under Section 269UJ of the Act. If the Department, after having obtained permission, had passed a fresh order under Section 269UJ withdrawing from acquisition, the petitioners could have challenged the same. Thirdly, even on facts, we do not find any suppression of material facts. All relevant documents were produced before the Appropriate Authority. Even the valuation report indicates that the lease subsisted on expiry of 10 years. Therefore, there is no suppression of facts as alleged by the Department. We, therefore, find merit in the petition.

. Under the above circumstances, we allow the petition in terms of prayer (c) i.e.

> "c) that this Hon'ble Court pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ order or direction directing Respondents Nos. 1 to 4 to forthwith pay the amount of Rs.4 crores to the petitioners."

. We may point out that Rs.4 crores has been invested the Prothonotary & Senior Master, High Court, Bombay in FD as per the usual practice. The last investment was made on 14/07/2002. We, accordingly, direct the Prothonotary & Senior Master, High Court, Bombay to encash the FD and pay the entire

> amount including interest upto the date of encashment to the petitioners as requested by the petitioners. We are allowing the petition with costs."

3. It would be, thus, seen that in the light of the order dated 23rd October, 2002 passed by this Court, the rights of M/s.Swastik India Private Limited and/or for that matter Atmaram W. Alwani & ors. stand acquired by the respondents under Chapter XX-C of the Income Tax Act, 1961.

4. Assuming that the lease that stood in favour of M/s.Swastik India Private Limited or for that matter Atmaram W. Alwani & ors (now in their shoes the respondents have stepped in) had expired, by itself that cannot be ground for eviction decree in extraordinary jurisdiction as is being sought by the petitioners. Even after expiry of the lease, the lessee can be said to be holding over the property under Section 116 of the Transfer of Property Act. Be that as it may, if at all the petitioners have acquired right to dispossess the respondents because of the expiry of the lease that stood in favour of Swastik India Private Limited, the course available to the petitioners is to pursue the appropriate civil remedy.

5. The learned senior counsel for the petitioner relied upon the judgment of the Supreme Court in the

case of M/s.Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay, **A.I.R.1989 S.C.1642** in support of his contention that the respondents cannot be permitted to act as a private litigant. They have public law duties, and upon expiry of the lease, they are liable to surrender possession and having not done so, the petitioners can invoke the extraordinary jurisdiction under Article 226 of the Constitution of India. We are afraid, the judgment of the Supreme Court in the case of M/s.Dwarkadas Marfatia has no application to the facts of the present case.

6. No case for invocation of extraordinary jurisdiction is made out.

7. Writ petition is dismissed in limine.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)